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6  
7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF MONTANA**  
9 **HELENA DIVISION**

10  
11 **GENET MCCANN**  
12 **Plaintiff,**

13 **v.**

14  
15 **The Supreme Court of the State of**  
16 **Montana;** Chief Justice Mike McGrath, in  
17 his official capacity as Chief Justice of the  
18 Montana Supreme Court;

19 **The COMMISSION ON PRACTICE of**  
20 **the Supreme Court of the State of**  
21 **Montana;** Ward Taleff, in his official  
22 capacity as Chairman of the Commission On  
23 Practice;

24 **OFFICE OF THE STATE**  
25 **DISCIPLINARY COUNSEL,** Michael  
26 Cotter Chief Disciplinary Counsel, in his  
27 official capacity; Jon Moog, deputy  
28 disciplinary counsel in his official capacity

**Defendants/Respondents.**

**Case No. \_\_\_\_\_**

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**Request a Jury Trial**

**Underlying State Court Proceeding  
Before the Montana Supreme Court:  
ODC No. 17-110/PR 16-0670**

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## PRELIMINARY STATEMENT

1. The Office of Disciplinary Counsel, the prosecutorial agent of the Montana Supreme Court, in concert with the Commission On Practice, the adjudicatory agent of the Montana Supreme Court, under color of the law, multiplied proceedings against me in bad faith, without hope of valid convictions.
2. They sought to use the disciplinary proceedings to trump up charges and then violate every conceivable constitutional right, law and rule to silence and crush me, because I asserted my 1<sup>st</sup> and 14<sup>th</sup> Amendment rights against powerful members of the bar and bench to expose their criminal conduct in my mother's guardianship proceeding and related corporate dissolution proceeding. (See Amended Complaint in DV 18-042)
3. Based upon the original 6 charges alleged by these powerful members of the bar, COP in league with ODC multiplied the charges exponentially into 15 charges, and held two COP/ODC proceedings, on March 23, 2018 to recommend 7 month suspension in ODC 17-110 (for the single contempt charge in the underlying ODC 17-110 proceeding that is the subject of this complaint) and disbarment in ODC 15-078 (the disciplinary proceeding instigated by the powerful members of the bar that is subject of the amended complaint in CV 18-042).
4. I did not attend the COP hearings because my federal constitutional rights to

1 prepare a defense were systematically and thoroughly denied both at the trial  
2 court level and at the pre-trial stage of the disciplinary proceedings. One day  
3 before the hearing COP denied my federal constitutional right to present the  
4 testimony of Sean Frampton after ODC forced me to disclose that he would  
5 testify that Judge Manley are tight friends and he saw them recently together in  
6 Whitefish at a Wold' family gathering, including Judge Manley's personal judicial  
7 assistant Chantel Wold McCauley, and that Chair Tracy Axelberg who is  
8 presiding over ODC 15-078 knows they are tight friends. (See Amended  
9 Complaint in DV 18-042)

10  
11  
12  
13 5. Tracy Axelberg denied my federal constitutional right to present powerful  
14 credible testimony to prove that my allegations are true. It's rigged. (Id.)

15  
16 6. In addition, COP/ODC engaged in a systemic effort from the beginning to  
17 prevent me from obtaining the evidence in the exclusive control of Judge Manley  
18 and Doug Wold. Pursuant to Mont. Code Anno, §26-1-206(5), "[e]vidence  
19 willfully suppressed would be adverse if produced" demonstrates that COP/ODC  
20 are engaged in the cover up.  
21

22  
23 7. There is no opportunity in state court to have my constitutional defense  
24 considered since the Montana Supreme Court white washed the facts and failed  
25 to consider 12+ federal constitutional arguments to affirm the null and void  
26 orders and sanctions, that denied me the opportunity for discovery, in protection  
27 of Doug Wold and Judge Manley.  
28



1 8. Because the Montana Supreme Court did the same thing in the appeal of *in re*  
2 *J.A.L.*, there is no opportunity in state court for the consideration of my federal  
3 constitutional defense in ODC 17-110. It white-washed facts, disregarded  
4 J.A.L.'s federal constitutional claims and rights, to uphold the unbridled  
5 discretion of its district court judge and the court appointee. It upheld the  
6 patently unconstitutional guardianship procedural statutes and null and void  
7 guardianship appointments, that denied J.A.L. at the onset, the right to be heard  
8 through counsel.  
9

10  
11  
12 9. In the face of great, immediate and impending irreparable harm set to occur  
13 next week on April 25 and April 29th, when the Montana Supreme Court disbars  
14 and suspends me, because I exercised 1st and 14th Amendment rights on behalf  
15 of J.A.L., my mother and myself, TEMPORARY RESTRAINING ORDER, IS  
16 WARRANTED.  
17  
18

19 10. This case also present two exception grounds for granting immediate  
20 injunctive relief. There is the bad faith use of the disciplinary proceedings to  
21 silence 1st and 14th Amendment rights, but the disciplinary proceedings itself is  
22 patently and flagrantly unconstitutional in violation of separation of powers. The  
23 inordinate concentration of exclusive power over attorneys conduct has perverted  
24 the moral intent of ethical rules into a inquisitorial proceedings to protect  
25 influential bar and bench members.  
26  
27  
28

11. A particularly exception circumstance exists here since these disciplinary

proceedings are also based upon a patently unconstitutional guardianship statutes that grants unbridled discretion to the district court judge and its appointees in violation of an individual's fundamental right to be heard through counsel before their individual autonomy is taken and in violation of their fundamental rights to retain the constitutional guarantees under the Bill of Rights absent a least restrictive alternative that promotes a compelling state interest.

12. These highly exceptional circumstances warrant immediate injunctive relief.

### STATEMENT OF FACTS

13. Because I have the evidence that these influential bar members engaged in felony tampering, embezzlement and mail fraud, and I sought to expose the evidence in my mother' guardianship case and a companion corporate dissolution case, I have become a target of the Montana Supreme Court's bench and bar, to be sanctioned, silence and disbarred. (See Am. Compt. in CV 18-042)

14. In these civil cases I have endured \$70,000 in sanctions as a pretext to punish and silence me because I exercised my 1st and 14th Amendment fundament rights to redress criminal misdeeds.

15. The Montana Supreme Court abused the legal machinery when it upheld Judge Manley's sanctions, based upon white-washed facts and a flagrant disregard for federal constitutional claims and rights. (See Am. Copt. CV 18-042)



1 16. Because I am an attorney, the disciplinary proceedings affords a three-way  
2 pincher attack to silence and crush me.

3  
4 17. Accordingly, ODC/COP initiated the underlying proceedings in ODC 17-110  
5 that is the subject of this injunction to concocted a set of 7 charges based upon  
6 lies and sheer abuse of the legal machinery to say black is white and white is  
7 black just because they hold the power of the public trust to do it.  
8

9 18. The implication is that I must be a real amoral attorney who deserves her  
10 comeuppance, but the truth is that I did two innocent things: 1) I exercised my  
11 1st Amendment right to recuse the district court judge because he nominated,  
12 then appointed his very dear close friend, Doug Wold, onto my mother's  
13 multimillion dollar estate to charged her \$392, 980.28 to manage her estate that is  
14 already managed by professional financial services for a fraction of the cost; and  
15 2) I agreed to advocate for J.A.L.'s 1st and 14th Amendment rights in a  
16 guardianship case that reduced her to a ward of the state without the opportunity  
17 to be heard through counsel.  
18  
19  
20  
21

22 19. I was originally charged in ODC 15-078 because the two powerful bar  
23 members availed themselves of the disciplinary process that is used to silence bar  
24 members they singled out for retribution.  
25

26 20. Although I provided the facts and evidence to ODC to criminally charge  
27 Doug Wold and Mark Parker and Casey Emerson, ODC did not investigate them.  
28 I was the target of the bench and bar, not them. (**Exhibit 3: My Response to**



Informal Complaint)

21. When ODC received an informal complaint from the Bugni's, the guardians *in re J.A.L.* and in the course of their unlawful investigation, my name came up (because I agreed to represent J.A.L.), soon I was the target of their unlawful investigation that resulted in 7 additional charges instituted by both ODC/COP.

22. It did not matter that the allegations in the informal complaint in the J.A.L. were not against me. I was not mentioned in their complaint. (**Exhibit 4:** Bugnis' Informal complaint)

23. It did not matter that the Bugnis' did not allege facts to establish grounds to discipline Tina Morin.

24. The fact is Tina Morin was implicated because she certified my filings in Judge Manley's court. She was warned not to help me or thing would not go well for her. (**Exhibit 13:** Aff of Tina Morin, ¶17)

25. Therefore, it did not matter that ODC exceeded its lawful authority to conduct investigation in violation of 4<sup>th</sup> Amendment right against unlawful search and seizures and its own rules, Montana Rules for Lawyer Disciplinary Enforcement. (**Exhibit 5:** Tina Morin's Response to Guardian's Informal Complaint)

26. Rule 5B, MRLDE establishes ODC's jurisdiction to conduct an investigation. Unless the factual allegations in the guardian's complaint, taken as true, establish a violation of the Montana Rules of Professional Conduct, ODC

1 does not have probable cause to compel an investigation. (**Exhibit 11:** MRLDE,  
2 Rule 5)

3  
4 27. The factual allegation that Tina Morin was harassing their attorney in email  
5 communications does not establish an ethical violation under the Montana Rules  
6 of Conduct. ODC has never charged Tina Morin based upon the allegations in  
7 the Bugnis' informal complaint is proof that ODC knows there was no basis for  
8 investigating her. ODC was on a witch hunt.  
9

10 28. Regardless of their lawlessness, they did not find anything so they had to  
11 concoct it and so they did.  
12

13 29. They simply twisted the truth so that documents said things that they did not.  
14 The record did not mean anything. All of it was subject to alterations by the  
15 ODC. ODC has the power to say black is white and white is black, and there  
16 wasn't anything I could do, because it already knew that the final arbiter of the  
17 proceedings, the Montana Supreme Court wanted me out. They were carrying  
18 out the will of their superior, the Montana Supreme Court.  
19  
20  
21

22 30. For example, ODC claims that J.A.L. has a court-appointed attorney when I  
23 communicated with J.A.L. and therefore I violated Rule 4.2 – Communication  
24 with person Represented by Counsel, and I was incompetent in violation of Rule  
25 1.1 for doing so, and failed to exercise independent professional judgment for  
26 attempt to represent J.A.L. in violation of Rule 2.1., that was a conflict of interest  
27 to her husband of 50 years, therefore I also violated 1.7, and because I refused to  
28



disclose confidential communications in the course of their unlawful investigation, I violated Rule 1.8, MRPC and 8A(6), MRLDE, even though Rules 1.8 and 1.6 justifies my objection. (**Exhibit 16:** ODC's Formal Compl't. in ODC 17-110)

31. However, if you read Bugnis' Informal complaint, the guardians refer to Debbie Churchill as J.A.L.'s guardian ad-litem, not counsel. (**Exhibit 4:** Guardian's Informal Complaint, p.2)

32. The record is also clear. Judge Kruger's Order identifies Debbie Churchill as J.A.L.'s guardian ad-litem. (**Exhibit 6:** Judge Krueger's September 24, 2013 Order, p.1, lines 17-18)

33. The Montana Supreme Court, on appeal, identifies Debbie Churchill as J.A.L.'s guardian ad-litem. (**Exhibit 7:** In re J.A.L., 2014 MT 196, ¶4)

34. ODC did not have a basis in the record for asserting that Debbie Churchill is J.A.L.'s attorney. The 2011 ex parte order ODC relies upon was clearly superseded by the district court's September 24, 2013 Order which held that Churchill represented J.A.L. as a guardian ad-litem.

35. The Montana Supreme Court then affirmed, on appeal, that Churchill was J.A.L.'s guardian ad-litem.

36. On November 19, 2015, J.A.L.'s executed written termination of Debbie Churchill's representation that was made part of, the record without objection. (**Exhibit 14:** Termination Notice, Ex. 2 To Motion For Annual Report and



Request For Consistent and Regular Visitation, p. 5)

37. On November 19, 2015, J.A.L., J.A.L.'s written request for representation was also entered into, and made part of, the record without objection. (**Ex. 14:** Request for legal representation, Ex.2 To Motion For Annual Report and Request For Consistent and Regular Visitation, pp. 9, 12)

38. By October 20, 2016, almost a year later, I entered into an association with Disability Rights of Montana (DRM) and, under its federal mandate, accessed and spoke with J.A.L.

39. By that time, Churchill was not J.A.L.'s attorney and even if she was, I had lawful access to J.A.,L. under DRM's federal mandate. (**Exhibit 8:** executed Association Agreement with DRM confirming that on October 20, 2016, we entered into an association to represent J.A.L. "on behalf of Disability Rights of Montana.")

40. Disability Right of Montana is a state protection and advocacy program for individuals with disabilities. They are authorized by 42 U.S.C. 15043(a)(2)(B)&(H) (in conjunction with §52-30-163 (5), MCA) with the federal-state mandate and power to access individuals with disabilities and investigate for the purpose of protecting and advocating for the rights of the disabled population of Montana. (**Exhibit 9:** 42 U.S.C. §15043); (**Exhibit 10:** §52-30-163, MCA)

41. Under Rule 4.2, I am authorized to communicate with a person represented

1 by counsel, if I am “authorized to do so by law.”

2 42. Rule 4.2 – Communication with person Represented by Counsel – states that  
3 [i]n representing a client, a lawyer shall not communicate about the subject of the  
4 representation with a person the lawyer knows to be represented by another  
5 lawyer in the matter, *unless the lawyer has the consent of the other lawyer or is*  
6 *authorized to do so by law* or a court order.”  
7  
8

9 43. Therefore, there is no basis under fact or law for ODC to have charged me  
10 with the Rule 4.2 violation and all of the other 6 charges that are implicated  
11 because ODC alleged that I violated Rule 4.2., MRPC.  
12

13 44. This proceeding was brought for improper purposes in violation of Rule 11,  
14 M.R.Civ.P. demonstrates that is was brought in bad faith to silence and vex me.  
15

16 45. The rules do not matter. The U.S. constitution does not matter.  
17

18 46. When I made the legal argument that Rule 5B of MRLDE did not grant ODC  
19 jurisdiction to investigate Tina Morin or myself, Chairman Taleff was offended  
20 that I would assert the rule of law and call for prosecutorial restraint, plainly set  
21 out in the Rules of Lawyer Disciplinary Enforcement. It was an insult to his  
22 authority that I challenged ODC’s jurisdiction. It was clear that he was identified  
23 with ODC as one single inquisitorial body who viewed any challenge  
24  
25  
26 insurrection.

27 47. Once Jon Moog disclosed his intent to charge me with 6 charges, he did not  
28 follow procedure that required him to file leave with the COP review panel.



1 (Ex.11: Rule 10, MRLDE)

2 48. Rule 10, MRLDE granted me an opportunity to respond. There was no  
3 review and no opportunity to respond. I was simply charged because that was  
4 what Jon Moog wanted to do and he appeared to know that what he wanted was  
5 exactly what was going to happen, and it did.

6  
7  
8 contempt proceedings

9 49. COP joined in the prosecution when Chairman Taleff instituted contempt  
10 proceedings against me. COP, Chairman Ward Taleff, in league with ODC Jon  
11 Moog, accused me of contempt when the undisputed facts and law demonstrated  
12 I was in compliance with COP's order to disclose. (Ex. 1: Emergency Rule  
13 12(b)(6) Motion to Dismiss Contempt Charges and Hearing)

14  
15  
16 50. There is no basis for ODC to file a notice of failure to comply, and there was  
17 no basis in law or fact for COP Chairman Taleff to order show cause why I  
18 should not be found in contempt. (Exhibit 15: ODC's Notice of Respondent's  
19 Failure to Comply) (Exhibit 16: Order to show cause why I should not be found  
20 in contempt)

21  
22  
23 51. I complied with the order to produce in 10 days. (Exhibit 1: Emergency  
24 Rule 12(b)(b) motion to Dismiss Contempt Charge and Hearing)

25  
26 52. I pointed out that because the November 27, 2017 Order was sent via U.S.  
27  
28



1 mail, I lawfully availed myself of Rule 6, M.R.Civ.P<sup>1</sup>. to apply 3 extra days for  
2 delivery of the documents that the November 27th Order mandated compliance in  
3 10 days. Because the 3rd day fell upon a Sunday, I had until Monday, December  
4 11, 2017, the date I filed and ODC admitted that I filed on December 11, 2017.

5  
6 **(Ex. 1)**

7  
8 53. COP Chairman Taleff denied my motion. He purposefully misconstrued the  
9 facts to wrongfully claim that the "Office of Disciplinary Counsel simply filed a  
10 notice indicating Respondent's time of providing it with the required documents"  
11 when ODC clearly filed a Notice of Failure to Comply. **(Exs.: 15 & 16)**

12  
13 54. COP Chairman Taleff also denied my motion claiming that there was no  
14 claim or charge so there is no basis for my motion. He was going for the juggler.  
15 **(Exhibit 2: Order re: Motion to Dismiss, p.2)** However, if you read his order to  
16 show cause he plainly states that the purpose of the hearing is for me to come  
17 forward and show why I should not be found in contempt.  
18

19  
20 55. COP Chairman Taleff acted in bad faith, lying in wait, to knowingly  
21 misrepresented facts in the record to allow an improper contempt proceedings to  
22 continue against me when there was no factual or legal basis for it. The contempt  
23 proceedings is frivolous because I complied and them both knew it. It was a bad-  
24 faith use of the disciplinary proceedings to harass and vex me.  
25  
26

27 56. Now, Chairman Taleff recommends 7 month suspension when I complied  
28

---

<sup>1</sup> According to Rule 12, MRLDE, the Montana Rules of Civil Procedure applies.

1 and he knows it, and ODC knows it.

2 57. Under the Show cause Rule, Rule 24, it at the most grants COP to issue 30  
3 month suspension and he recommends 7 months when I didn't do anything wrong  
4 and he knows it.  
5

6 58. The rule of law means nothing here. The only thing that matter is that I am  
7 done away with as quickly as possible. It's blatant outrageous abuse of the legal  
8 machinery.  
9

10 No opportunity for my federal constitutional defenses to be heard in state court  
11

12 59. There is no opportunity for my constitutional or statutory defenses to be  
13 heard by the Montana Supreme Court since the Montana Supreme Court failed to  
14 consider my 12+ constitutional claims that form the basis for my defense in both  
15 of these disciplinary proceedings and failed to consider J.A.L.'s federal  
16 constitutional and statutory arguments for reversal. It simply refuses to consider  
17 what it does not want to consider as though the arguments were never made.  
18

19 60. The conduct of the Montana Supreme Court violates federal equal protection  
20 of the laws, an argument I made to the Montana Supreme Court in my petition for  
21 rehearing.  
22

23 61. I stated on page 6 of My Petition for Rehearing *In re A.M.M., II*:  
24  
25  
26  
27  
28



Moreover, when this Court determined not to consider appeal of the Order Approving First Annual Account and the well-briefed arguments is a denial of due process and equal protection of the law that prejudiced the Appellants and A.M.M.. “If a state creates a system for appellate review as an integral part of the system for finally adjudication .... The procedures used must comport with the demands of due process and equal protection.” *Cooper v. McGrath*, 314 F.2upp.2d 967 (2004); See also *Evitts v. Lucey*, 469 U.S. 387, 393, 105 S.Ct. 830 (1985).

62. The Montana Supreme Court ignored this federal constitutional argument too.

63. J.A.L. 's federal constitutional arguments on appeal *In re J.A.L.* received the same disregard. The Court refused to consider them. It just ignored them.

64. On her behalf, her husband's attorney asserted on appeal that J.A.L.'s federal due process right to be heard at the September 2013 hearing was categorically denied at a proceedings that deprived her of her 14<sup>th</sup> amendment fundamental rights to individual autonomy and to the privacy of her family/marital relationship. (**Exhibit 12:** Appellant's Opening Br, pp.24-25.)

65. Ron Lowney also asserted J.A.L.'s statutory enumerated rights to be present at the hearing, to present through counsel, to present evidence, to cross-examine, and her right to a jury trial that are set out in §72-5-315(4), MCA. (**Ex. 12: Id.**, pp.24-25.)



1 66. The Montana Supreme Court, in its opinion, *in re J.A.L.*, did not address  
2 J.A.L.'s federal constitutional rights. By not considering her federal constitutional  
3 argument, the Montana Supreme Court demonstrates a disregard for the U.S.  
4 Constitution. (**Exhibit 7: *In re J.A.L.***, 2014 MT 196)

5  
6 67. The state court's disregard for J.A.L.'s most fundamental rights under the  
7 U.S. Constitution has injured J.A.L.'s 1<sup>st</sup> and 14<sup>th</sup> Amendment rights to access the  
8 court, to petition for redress of the deprivation of her most fundamental core rights  
9 that defines fundamental individual freedom.  
10

11  
12 68. She is a ward of the state because her 1<sup>st</sup> and 14<sup>th</sup> amendments were  
13 systematically disregarded by the state courts. She is in a 24/7 locked down  
14 facility that does not permit her to call to her husband. She is not free to come and  
15 go as she pleases. She is told what to wear, who she sees, where she can and can't  
16 go. If she is even permitted to go anywhere at all, it is entirely up to the guardians  
17 who seldom come to around. She is denied her martial relationship with her  
18 husband of 55+ years. J.A.L.'s is warehouses and isolated. She is forced to live  
19 out her days among Alzheimer patients, when she does not have the disease or any  
20 other mental impairment, and she wants to go home to be with her husband of 55  
21 years who had been taking care of her for 30 years since she first contracted  
22 multiple sclerosis, a physical disability disease that affects her voice, gait and  
23 continence.  
24  
25  
26  
27  
28

69. The foregoing demonstrates that J.A.L. has suffered a substantial loss of her

1 1<sup>st</sup> and 14<sup>th</sup> Amendment freedoms. A convicted felon has more rights than J.A.L.  
2 Most convicted felons have a date of release to look forward to, to give them hope.  
3 J.A.L. has no release date to give her hope. J.A.L. has no recourse in state courts.  
4

5 70. There is no Montana attorney will not touch her case because they fear the  
6 reprisals that would await them if they advocate for her 1<sup>st</sup> and 14<sup>th</sup> Amendment  
7 rights to be heard and retain counsel and to petition for the redress of her  
8 constitutional deprivations that has resulted in her own private hell.  
9

10 71. The first line of attack in by opposing counsel motioning for sanctions in the  
11 guardianship case.  
12

13 71. The attorneys at Disability Rights of Montana dropped this case as soon as  
14 they received Steve Shapiro's filings and threatens of sanctions. (**Exhibit22:**  
15 DRM threatened by Shapiro's Motion for Sanctions and immediately drops out)  
16

17 Ron's Informal Complaint disregarded  
18

19 72. Ron Lowney filed an informal complaint with the ODC. (**Exhibit 17:**  
20 Ron's Informal Complaint) ODC did not bother to investigate. (**Exhibit 18:**  
21 ODC's Response) Mr. Lowney appealed its decision to the COP. The COP did not  
22 bother to look into the matter and adopted ODC's findings. (**Exhibit 19:** COP's  
23 Response)  
24

25  
26 73. Mr. Ron Lowney appealed COP's decision to the Montana Supreme Court.  
27 **Exhibit: 20:** R. Lowney's Petition for Review to Mont. S. Ct.)  
28

74. The Montana Supreme Court, without explanation, finding or analysis,



1 adopted ODC/COP findings and, true to form, refused to consider the federal  
2 constitutional claim that J.A.L. has been systematically denied legal counsel.

3 **(Exhibit 21: M.S.Ct.'s Order adopting COP adopting ODC's)**  
4

5  
6 Patently unconstitutional guardianship statutes  
7

8 75. The guardianship procedural and substantive statutes, Mont. Code Anno. §  
9 72-5-315(2), §72-5-312, §72-5-316 and §72-5-321 are all patently unconstitutional  
10 on their face and as applied. The procedural statute § 72-5-315(2), MCA is  
11 patently over-broad since it grants the district court judge unbridled discretion to  
12 abridge an individual's fundamental 14th Amendment right to be heard through  
13 counsel without demonstrating that his decision is the least restrictive alternative to  
14 promote a compelling state interest.  
15  
16

17 76. Mont. Code Anno. §72-5-312, §72-5-316 and §72-5-321 are all patently  
18 unconstitutional on their face and as applied since they grant the guardian  
19 unbridled discretion to abridge an individual's fundamental constitutional rights to  
20 personal autonomy and to the privacy of family life and living arrangements  
21 without demonstrating that her action is the least restrictive alternative to  
22 promoting a compelling state interest.  
23  
24  
25

26 77. The 2011 and 2013 guardianship Orders are void on their face since the  
27 district court violated §72-5-315(4) enumerated trial court rights that J.A.L. was  
28 entitled to. She was entitled to be present, to be present through counsel, to present



1 evidence, to cross examine testimony, especially the testimony of the court  
2 appointed visitor, the court -appointed physical and the court appointed G.A.L..

3 78. The record demonstrates that J.A.L. was not present through counsel. In the  
4 2013 proceeding the G.A.L. made sure that J.A.L. was not present at the hearing in  
5 violation of 72-5-315(4), MCA. (**Exhibit 12:** Brief of Appellant in *In re*  
6 *J.A.L.*, pp. 23-25 (No. DA 13-0767)) (**Exhibit 6:** September 24, 2013 Order, FOF  
7 3, p.1)  
8

9 79. Because these are special and limited probate proceedings, an order is void  
10 on its face for lack of subject-matter jurisdiction when the court exceeds its  
11 statutory provisions. Since the district court in *in re J.A.L.*, did not ensure that  
12 J.A.L. had an attorney and appeared at the 2013 proceeding, the 2011 and 2013  
13 Orders are void on their face.  
14

15 80. The ODC charges have no hope of obtaining a valid conviction because the  
16 2011 and 2013 Orders establishing the guardianship and conservatorship of J.A.L.  
17 are void on their face. They defy the statutory procedures set out in 72-5-315 (4),  
18 MCA. They were not followed in flagrant violation of 14<sup>th</sup> amendment due  
19 process because J.A.L. was denied opportunity to be heard through counsel and  
20 was forced by the G.A.L. to stay at the facility rather than attend the hearing.  
21

22 Irreparable injury  
23  
24  
25  
26  
27

28 81. The loss of and substantial impairment to First and Fourteenth Amendment

1 rights to be heard and petition for redress is immediate, great and irreparable. COP  
2 has recommended 7 month suspension for asserting J.A.L.'s First and Fourteenth  
3 Amendment rights in her guardianship proceedings.  
4

5 82. The loss of and impairment of J.A.L.'s 1<sup>st</sup> and 14<sup>th</sup> Amendment rights is  
6 irreparable. Disability Rights of Montana is too intimidated to carry out their  
7 mandate for fear that they will be punished as I am for attempting to represent  
8 J.A.L.'s interest. There is no one who is willing to step up to represent her in this  
9 climate of fear and intimidation created because ODC goes after any attorney who  
10 tries, and they have the unchecked power to do as they please.  
11

12 83. It's been seven years and I am the only attorney who stepped up and look  
13 what has happened to me. .  
14

15 84. J.A.L. has been systematically denied her 1<sup>st</sup> and 14<sup>th</sup> Amendment right to be  
16 heard in her guardianship/conservatorship proceeding from the onset when the  
17 district court, ex parte, ordered Debbie Churchill, as guardian ad-litem, to represent  
18 J.A.L., with the power an duty of substitute judgment.  
19

20 85. Debbie Churchill never represented J.A.L.'s interest.  
21

22 82. In fact, she caused J.A.L. not to be present at the final guardianship hearing  
23 that determined the guardianship and conservatorship presently.  
24

25 83. I am injured by her deprivations of free expression, since I was punished for  
26 asserting, on her behalf, her right to be heard.  
27

28 84. The state court proceeding is, therefore, causing great, immediate and



1 irreparable injury and loss to First Amendment rights not only to myself, but also  
2 to J.A.L. J.A.L. remains oppressed and disenfranchised of her civil liberties for  
3 more than 7 years.  
4

5 85. I face the grave loss of career and reputation because I exposed the criminal  
6 conduct of members of the bench and bar that are much more powerful than I.  
7

8 86. The exceptional circumstances of bad faith prosecution and patently  
9 unconstitutional statutes that injury free expression warrants an IMMEDIATE  
10 EMERGENCY TEMPORARY RESTRAINIGN ORDER pending a jury trial and  
11 final judgment on permanent injunctive and declaratory relief.  
12

13 87. This case is exceptionally extreme because there was never any *valid* basis for  
14 instituting the proceeding in ODC 17-110.  
15

16 88. Because two well-recognized independent grounds of exceptional  
17 circumstances warranting an injunction are both present in this case, an emergency  
18 injunction is appropriate to prevent further irreparable injury  
19

20 89. **“The resulting loss of First Amendment freedoms, for even minimal**  
21 **periods of time, unquestionably constitutes the irreparable injury.”** Elrod v.  
22 ***Burns***, 427 U.S. 347. 373-74 (1976)  
23

24 90. Therefore, Plaintiff McCann is entitled to immediate declaratory and  
25 injunctive relief from this Court.  
26

## 27 JURISDICTION AND VENUE

28

91. This Court has jurisdiction under 28 U.S.C. §§ 1331 (federal question);

1 28 U.S.C. § 1343 (civil rights), 42 U.S.C. § 1983 (civil rights), and the First and  
2 Fourteenth Amendments to the United States Constitution.

3 92. The Court has authority to grant the requested relief pursuant to 28 U.S.C. §§  
4 2201, 2202, et seq. (declaratory and injunctive relief); 28 U.S.C. §1346;

5  
6 93. Venue for this action properly lies in the Helena Division of the District of  
7 Montana because Defendants are located and work, and reside in the Helena  
8 Division (except Chairman Taleff resides in Great Falls).  
9

10 **PARTIES**

11  
12 94. Plaintiff Genet McCann resides in Gallatin County in the State of Montana.

13 95. Defendant Chief Justice Mike McGrath of the Montana Supreme Court  
14 works and based upon information and belief resides in Lewis & Clark County in  
15 the State of Montana;  
16

17 96. Defendant Ward Taleff is Chairman of Commission On Practice. The office  
18 for the Commission On Practice is located in Helena where he conducts his official  
19 duties. I believe that Ward Taleff resides in Great Falls, Montana.  
20

21 97. Defendant Michael W. Cotter is Chief Disciplinary Counsel for Montana's  
22 Office of Disciplinary Counsel. Plaintiff McCann is informed, believes, and  
23 therefore alleges that Defendant Michael W. Cotter resides in Lewis & Clark  
24 County in the State of Montana. Plaintiff is suing Defendant Michael W. Cotter in  
25 his official capacity only.  
26  
27